

Senate File 2190 - Reprinted

SENATE FILE 2190
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3008)

(COMPANION TO HF 2245)

(As Amended and Passed by the Senate March 8, 2016)

A BILL FOR

1 An Act providing for the establishment of county chemical
2 substance abuse monitoring pilot programs and modifying
3 temporary restricted license eligibility requirements for
4 operating-while-intoxicated offenders.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

COUNTY CHEMICAL SUBSTANCE ABUSE MONITORING PILOT PROGRAMS

Section 1. COUNTY CHEMICAL SUBSTANCE ABUSE MONITORING PILOT PROGRAMS.

1. The department of public safety, in collaboration with the governor's traffic safety bureau, may, in an effort to reduce the number of crimes that have a nexus with chemical substance abuse, adopt rules providing for the creation and approval of an application from a county for the implementation of a countywide chemical substance abuse monitoring pilot program that is available twenty-four hours per day, seven days per week.

2. A chemical substance abuse monitoring pilot program shall do all of the following:

a. Make the program available to a person who has been charged with, pled guilty to, or been convicted of a crime that has a nexus with chemical substance abuse. The program shall require a participating person to abstain from all chemical substances for a period of time. A person wishing to participate in the program shall apply to the court on a form designed by the county, and the court may order the person's participation in the program as a component or condition of pretrial release or probation. The application form shall include an itemization of all costs associated with participation in the program. This paragraph shall not apply to a person who has been charged with, pled guilty to, or been convicted of a first offense of operating while intoxicated in violation of section 321J.2 where the person's alcohol concentration was lower than .15 and no accident resulting in personal injury or property damage occurred, unless upon application and a hearing the court permits participation in the program by such a person.

b. Require the person to be subject to testing to determine whether a chemical substance is present in the person's body. The commissioner of public safety shall approve the use of

1 appropriate devices and technology for this purpose, and may,
2 in the case of alcohol concentration testing, designate certain
3 portable breath test devices for this purpose. Testing shall
4 occur in the following manner:

5 (1) At least twice per day at a central location.

6 (2) Where testing under subparagraph (1) is impractical, by
7 continuous transdermal or electronic monitoring.

8 c. Provide that allegations of a test failure, a refusal to
9 submit to a test, or a failure to appear for testing shall be
10 communicated ex parte to a magistrate as soon as practicable.
11 A magistrate who receives such a communication may order
12 immediate incarceration pending a hearing on the allegation but
13 lasting no longer than twenty-four hours after the issuance of
14 the order or, if the person failed to appear for testing as
15 scheduled, the magistrate may issue a warrant for the arrest of
16 the person for a violation of the terms of pretrial release or
17 probation, as applicable.

18 d. Require a person participating in the program to pay
19 program costs, including costs of installation, monitoring, and
20 deactivation of any testing devices.

21 3. An approved pilot program shall begin on October 1, 2016,
22 or upon the effective date of department rules, whichever is
23 earlier, and shall be conducted for a minimum of one year.

24 4. The department of public safety shall adopt rules
25 pursuant to chapter 17A to implement this section including
26 but not limited to provisions relating to applications for,
27 approval of, costs of, and oversight of the pilot programs and
28 reporting requirements for participating counties.

29 5. The department of public safety shall submit a report on
30 the results of the pilot programs and make recommendations to
31 the general assembly by December 15, 2017.

32 6. For the purposes of this section, "chemical substance"
33 means any alcoholic beverage as defined in section 321J.1 and
34 any controlled substance as defined in section 124.101.

35 DIVISION II

OPERATING WHILE INTOXICATED

1
2 Sec. 2. Section 321J.2, subsection 3, paragraph d,
3 subparagraphs (1) and (2), Code 2016, are amended to read as
4 follows:

5 (1) A defendant whose alcohol concentration is .08 or more
6 ~~but not more than .10~~ shall not be eligible for any temporary
7 restricted license for at least thirty days if a test was
8 obtained and an accident resulting in personal injury or
9 property damage occurred. ~~The department shall require the~~
10 ~~defendant to install an ignition interlock device of a type~~
11 ~~approved by the commissioner of public safety on all vehicles~~
12 ~~owned or operated by the defendant if the defendant seeks a~~
13 ~~temporary restricted license.~~ There shall be no such period of
14 ineligibility if no such accident occurred, ~~and the defendant~~
15 ~~shall not be required to install an ignition interlock device.~~

16 (2) ~~A defendant whose alcohol concentration is more than .10~~
17 ~~shall not be eligible for any temporary restricted license for~~
18 ~~at least thirty days if a test was obtained, and an accident~~
19 ~~resulting in personal injury or property damage occurred or the~~
20 ~~defendant's alcohol concentration exceeded .15. There shall be~~
21 ~~no such period of ineligibility if no such accident occurred~~
22 ~~and the defendant's alcohol concentration did not exceed .15.~~
23 ~~In either case, where~~ Where a defendant's alcohol concentration
24 is more than .10, the department shall require the defendant to
25 install an ignition interlock device of a type approved by the
26 commissioner of public safety on all vehicles owned or operated
27 by the defendant if the defendant seeks a temporary restricted
28 license.

29 Sec. 3. Section 321J.4, subsections 1, 2, and 3, Code 2016,
30 are amended to read as follows:

31 1. If a defendant is convicted of a violation of section
32 321J.2 and the defendant's driver's license or nonresident
33 operating privilege has not been revoked under [section 321J.9](#)
34 or [321J.12](#) for the occurrence from which the arrest arose, the
35 department shall revoke the defendant's driver's license or

1 nonresident operating privilege for one hundred eighty days
2 if the defendant submitted to chemical testing and has had
3 no previous conviction or revocation under [this chapter](#) and
4 shall revoke the defendant's driver's license or nonresident
5 operating privilege for one year if the defendant refused to
6 submit to chemical testing and has had no previous conviction
7 or revocation under [this chapter](#). The defendant shall not be
8 eligible for any temporary restricted license for at least
9 ninety days if a test was refused under [section 321J.9](#).

10 a. A defendant whose alcohol concentration is .08 or more
11 ~~but not more than .10~~ shall not be eligible for any temporary
12 restricted license for at least thirty days if a test was
13 obtained and an accident resulting in personal injury or
14 property damage occurred. ~~The department shall require the~~
15 ~~defendant to install an ignition interlock device of a type~~
16 ~~approved by the commissioner of public safety on all vehicles~~
17 ~~owned or operated by the defendant if the defendant seeks a~~
18 ~~temporary restricted license. There shall be no such period of~~
19 ~~ineligibility if no such accident occurred, and the defendant~~
20 ~~shall not be required to install an ignition interlock device.~~

21 b. ~~A defendant whose alcohol concentration is more than .10~~
22 ~~shall not be eligible for any temporary restricted license for~~
23 ~~at least thirty days if a test was obtained and an accident~~
24 ~~resulting in personal injury or property damage occurred or the~~
25 ~~defendant's alcohol concentration exceeded .15. There shall be~~
26 ~~no such period of ineligibility if no such accident occurred~~
27 ~~and the defendant's alcohol concentration did not exceed .15.~~
28 ~~In either case, where~~ Where a defendant's alcohol concentration
29 is more than .10, the department shall require the defendant to
30 install an ignition interlock device of a type approved by the
31 commissioner of public safety on all vehicles owned or operated
32 by the defendant if the defendant seeks a temporary restricted
33 license.

34 c. If the defendant is under the age of twenty-one, the
35 defendant shall not be eligible for a temporary restricted

1 license for at least sixty days after the effective date of
2 revocation.

3 2. If a defendant is convicted of a violation of section
4 321J.2, and the defendant's driver's license or nonresident
5 operating privilege has not already been revoked under section
6 321J.9 or 321J.12 for the occurrence from which the arrest
7 arose, the department shall revoke the defendant's driver's
8 license or nonresident operating privilege for one year if the
9 defendant submitted to chemical testing and has had a previous
10 conviction or revocation under this chapter and shall revoke
11 the defendant's driver's license or nonresident operating
12 privilege for two years if the defendant refused to submit to
13 chemical testing and has had a previous revocation under this
14 chapter. The defendant shall not be eligible for any temporary
15 restricted license for forty-five days after the effective date
16 of revocation if the defendant submitted to chemical testing
17 and an accident resulting in personal injury or property
18 damage occurred and shall not be eligible for any temporary
19 restricted license for ninety days after the effective date of
20 revocation if the defendant refused chemical testing. The
21 temporary restricted license shall be issued in accordance with
22 section 321J.20, subsection 2. The department shall require
23 the defendant to install an ignition interlock device of a type
24 approved by the commissioner of public safety on all vehicles
25 owned or operated by the defendant if the defendant seeks a
26 temporary restricted license at the end of the minimum period
27 of ineligibility. A temporary restricted license shall not
28 be granted by the department until the defendant installs the
29 ignition interlock device.

30 3. If the court defers judgment pursuant to section 907.3
31 for a violation of section 321J.2, and if the defendant's
32 driver's license or nonresident operating privilege has not
33 been revoked under section 321J.9 or 321J.12, or has not
34 otherwise been revoked for the occurrence from which the arrest
35 arose, the department shall revoke the defendant's driver's

1 license or nonresident operating privilege for a period of not
2 less than thirty days nor more than ninety days. The defendant
3 shall not be eligible for any temporary restricted license for
4 at least ninety days if a test was refused.

5 a. A defendant whose alcohol concentration is .08 or more
6 ~~but not more than .10~~ shall not be eligible for any temporary
7 restricted license for at least thirty days if a test was
8 obtained and an accident resulting in personal injury or
9 property damage occurred. ~~The department shall require the~~
10 ~~defendant to install an ignition interlock device of a type~~
11 ~~approved by the commissioner of public safety on all vehicles~~
12 ~~owned or operated by the defendant if the defendant seeks a~~
13 ~~temporary restricted license.~~ There shall be no such period of
14 ineligibility if no such accident occurred, ~~and the defendant~~
15 ~~shall not be required to install an ignition interlock device.~~

16 b. ~~A defendant whose alcohol concentration is more than .10~~
17 ~~shall not be eligible for any temporary restricted license for~~
18 ~~at least thirty days if a test was obtained and an accident~~
19 ~~resulting in personal injury or property damage occurred or the~~
20 ~~defendant's alcohol concentration exceeded .15. There shall be~~
21 ~~no such period of ineligibility if no such accident occurred~~
22 ~~and the defendant's alcohol concentration did not exceed .15.~~
23 ~~In either case, where~~ Where a defendant's alcohol concentration
24 is more than .10, the department shall require the defendant to
25 install an ignition interlock device of a type approved by the
26 commissioner of public safety on all vehicles owned or operated
27 by the defendant if the defendant seeks a temporary restricted
28 license.

29 c. If the defendant is under the age of twenty-one, the
30 defendant shall not be eligible for a temporary restricted
31 license for at least sixty days after the effective date of the
32 revocation.

33 Sec. 4. Section 321J.12, subsections 1 and 2, Code 2016, are
34 amended to read as follows:

35 1. Upon certification, subject to penalty for perjury, by

1 the peace officer that there existed reasonable grounds to
 2 believe that the person had been operating a motor vehicle in
 3 violation of [section 321J.2](#), that there existed one or more
 4 of the necessary conditions for chemical testing described in
 5 section 321J.6, subsection 1, and that the person submitted to
 6 chemical testing and the test results indicated the presence
 7 of a controlled substance or other drug, or an alcohol
 8 concentration equal to or in excess of the level prohibited by
 9 section 321J.2, or a combination of alcohol and another drug in
 10 violation of [section 321J.2](#), the department shall revoke the
 11 person's driver's license or nonresident operating privilege
 12 for the following periods of time:

- 13 a. One hundred eighty days if the person has had no
 14 revocation under [this chapter](#).
- 15 b. One year if the person has had a one previous revocation
 16 under [this chapter](#).
- 17 c. Two years if the person has had two or more previous
 18 revocations under this chapter.

19 2. a. A person whose driver's license or nonresident
 20 operating privileges have been revoked under [subsection 1](#),
 21 paragraph "a", whose alcohol concentration is .08 or more but
 22 ~~not more than .10~~ shall not be eligible for any temporary
 23 restricted license for at least thirty days after the effective
 24 date of the revocation if a test was obtained and an accident
 25 resulting in personal injury or property damage occurred. The
 26 ~~department shall require the defendant to install an ignition~~
 27 ~~interlock device of a type approved by the commissioner~~
 28 ~~of public safety on all vehicles owned or operated by the~~
 29 ~~defendant if the defendant seeks a temporary license. There~~
 30 shall be no such period of ineligibility if no such accident
 31 occurred, and the defendant shall not be required to install
 32 an ignition interlock device.

33 b. ~~A defendant whose alcohol concentration is more than .10~~
 34 ~~shall not be eligible for any temporary restricted license for~~
 35 ~~at least thirty days if a test was obtained and an accident~~

~~1 resulting in personal injury or property damage occurred or the~~
~~2 defendant's alcohol concentration exceeded .15. There shall be~~
~~3 no such period of ineligibility if no such accident occurred~~
~~4 and the defendant's alcohol concentration did not exceed .15.~~
5 ~~In either case, where~~ Where a defendant's alcohol concentration
6 is more than .10, the department shall require the defendant to
7 install an ignition interlock device of a type approved by the
8 commissioner of public safety on all vehicles owned or operated
9 by the defendant if the defendant seeks a temporary restricted
10 license.

11 c. If the person is under the age of twenty-one, the person
12 shall not be eligible for a temporary restricted license for at
13 least sixty days after the effective date of the revocation.

14 d. A person whose license or privileges have been revoked
15 under subsection 1, paragraph "b", for one year shall not be
16 eligible for any temporary restricted license for forty-five
17 days after the effective date of the revocation, and if a test
18 was obtained and an accident resulting in personal injury or
19 property damage occurred. If a person's license or privileges
20 have been revoked under subsection 1, paragraph "b", the
21 department shall require the person to install an ignition
22 interlock device of a type approved by the commissioner
23 of public safety on all vehicles owned or operated by the
24 defendant if the defendant seeks a temporary restricted license
25 at the end of the minimum period of ineligibility. The
26 temporary restricted license shall be issued in accordance with
27 section 321J.20, subsection 2. A temporary restricted license
28 shall not be granted by the department until the defendant
29 installs the ignition interlock device.

30 e. A person whose license or privileges have been revoked
31 under subsection 1, paragraph "c", for two years shall not be
32 eligible for any temporary restricted license for forty-five
33 days after the effective date of the revocation. The
34 department shall require the person to install an ignition
35 interlock device of a type approved by the commissioner

1 of public safety on all vehicles owned or operated by the
2 defendant if the defendant seeks a temporary restricted
3 license at the end of the minimum period of ineligibility. The
4 temporary restricted license shall be issued in accordance with
5 section 321J.20, subsection 2. A temporary restricted license
6 shall not be granted by the department until the defendant
7 installs the ignition interlock device.

8 Sec. 5. Section 321J.17, subsection 3, Code 2016, is amended
9 to read as follows:

10 3. The department shall also require certification of
11 installation of an ignition interlock device of a type approved
12 by the commissioner of public safety on all motor vehicles
13 owned or operated by any person seeking reinstatement following
14 a second or subsequent revocation under [section 321J.4](#),
15 [321J.9](#), or [321J.12](#). The requirement for the installation of
16 an approved ignition interlock device shall be for one year
17 from the date of reinstatement unless a longer time period
18 is required by statute. The one-year period a person is
19 required to maintain an ignition interlock device under this
20 subsection shall be reduced by any period of time the person
21 held a valid temporary restricted license during the period of
22 the revocation for the occurrence from which the arrest arose,
23 including any period in which the person participated in a 24-7
24 sobriety program, as defined in section 321J.20. The person
25 shall not operate any motor vehicle which is not equipped with
26 an approved ignition interlock device during the period in
27 which an ignition interlock device must be maintained, and the
28 department shall not grant reinstatement unless the person
29 certifies installation of an ignition interlock device as
30 required in [this subsection](#).

31 Sec. 6. Section 321J.20, subsection 1, paragraph a,
32 unnumbered paragraph 1, Code 2016, is amended to read as
33 follows:

34 The department may, on application, issue a temporary
35 restricted license to a person whose noncommercial driver's

1 license is revoked under [this chapter](#) allowing the person to
 2 drive to and from the person's home and specified places at
 3 specified times which can be verified by the department and
 4 which are required by the person's full-time or part-time
 5 employment, continuing health care or the continuing health
 6 care of another who is dependent upon the person, continuing
 7 education while enrolled in an educational institution on a
 8 part-time or full-time basis and while pursuing a course of
 9 study leading to a diploma, degree, or other certification of
 10 successful educational completion, substance abuse treatment,
 11 court-ordered community service responsibilities, ~~and~~
 12 appointments with the person's parole or probation officer,
 13 and participation in a 24-7 sobriety program, if the person's
 14 driver's license has not been revoked previously under section
 15 321J.4, [321J.9](#), or [321J.12](#) and if any of the following apply:

16 Sec. 7. Section 321J.20, subsection 1, paragraph b, Code
 17 2016, is amended to read as follows:

18 *b.* A temporary restricted license may be issued under this
 19 subsection if the person's noncommercial driver's license is
 20 revoked for two years under [section 321J.4, subsection 2](#), or
 21 section 321J.9, subsection 1, paragraph "b", and the ~~first three~~
 22 ~~hundred sixty-five days of the revocation have~~ minimum period
 23 of ineligibility for issuance of a temporary restricted license
 24 has expired.

25 Sec. 8. Section 321J.20, subsection 2, paragraph a, Code
 26 2016, is amended to read as follows:

27 *a.* Notwithstanding [section 321.560](#), the department may,
 28 on application, and upon the expiration of the minimum period
 29 of ineligibility for a temporary restricted license provided
 30 for under [section 321.560, 321J.4, 321J.9, or 321J.12](#), issue a
 31 temporary restricted license to a person whose noncommercial
 32 driver's license has either been revoked under [this chapter](#), or
 33 revoked or suspended under [chapter 321](#) solely for violations
 34 of [this chapter](#), or who has been determined to be a habitual
 35 offender under [chapter 321](#) based solely on violations of

1 this chapter or on violations listed in section 321.560,
 2 subsection 1, paragraph "b", and who is not eligible for a
 3 temporary restricted license under subsection 1. However,
 4 the department may not issue a temporary restricted license
 5 under this subsection for a violation of section 321J.2A or
 6 to a person under the age of twenty-one whose license is
 7 revoked under section 321J.4, 321J.9, or 321J.12. A temporary
 8 restricted license issued under this subsection may allow the
 9 person to drive to and from the person's home and specified
 10 places at specified times which can be verified by the
 11 department and which are required by the person's full-time or
 12 part-time employment; continuing education while enrolled in an
 13 educational institution on a part-time or full-time basis and
 14 while pursuing a course of study leading to a diploma, degree,
 15 or other certification of successful educational completion; ~~or~~
 16 substance abuse treatment; or participation in a 24-7 sobriety
 17 program.

18 Sec. 9. Section 321J.20, subsection 3, Code 2016, is amended
 19 to read as follows:

20 3. If a person required to install an ignition interlock
 21 device or participate in a 24-7 sobriety program operates
 22 a motor vehicle which does not have an approved ignition
 23 interlock device or while not in compliance with the 24-7
 24 sobriety program, or if the person tampers with or circumvents
 25 an ignition interlock device, in addition to other penalties
 26 provided, the person's temporary restricted license shall be
 27 revoked.

28 Sec. 10. Section 321J.20, Code 2016, is amended by adding
 29 the following new subsection:

30 NEW SUBSECTION. 10. Notwithstanding any other provision of
 31 law to the contrary, in any circumstance in which this chapter
 32 requires the installation of an ignition interlock device in
 33 all vehicles owned or operated by a person as a condition of
 34 the person's license or privilege to operate noncommercial
 35 motor vehicles, the department may accept, in lieu of

1 installation of an ignition interlock device, a certification
2 of the person's participation in and compliance with a 24-7
3 sobriety program. As used in this section, "*24-7 sobriety*
4 *program*" means as defined in 23 U.S.C. §164(a), as amended by
5 the federal Fixing America's Surface Transportation Act, Pub.
6 L. No. 114-94, §1414. The department, in consultation with the
7 department of public safety, may adopt rules for issuing and
8 accepting a certification of participation in and compliance
9 with a 24-7 sobriety program. This subsection shall be
10 construed and implemented to comply with 23 U.S.C. §164(a), as
11 amended by the federal Fixing America's Surface Transportation
12 Act, Pub. L. No. 114-94, §1414, and shall not apply if such
13 application results in a finding of noncompliance with 23
14 U.S.C. §164 that results or will result in a reservation
15 or transfer of funds pursuant to 23 U.S.C. §164(b). This
16 subsection shall not authorize the operation of a motor vehicle
17 for any purpose not otherwise authorized by this chapter.